

Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com
jmcdonell@jonesday.com

Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
tglanier@jonesday.com
jfroyd@jonesday.com

Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3939
Facsimile: (832) 239-3600
swcowan@jonesday.com
jlfuchs@jonesday.com

Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

BINGHAM McCUTCHEN LLP
DONN P. PICKETT (SBN 72257)
GEOFFREY M. HOWARD (SBN 157468)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286
donn.pickett@bingham.com
geoff.howard@bingham.com

BOIES, SCHILLER & FLEXNER LLP
DAVID BOIES (Admitted *Pro Hac Vice*)
333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
dboies@bsflfp.com
STEVEN C. HOLTZMAN (SBN 144177)
1999 Harrison St., Suite 900
Oakland, CA 94612
Telephone: (510) 874-1000
sholtzman@bsflfp.com

DORIAN DALEY (SBN 129049)
JENNIFER GLOSS (SBN 154227)
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: (650) 506-4846
Facsimile: (650) 506-7114
dorian.daley@oracle.com
jennifer.gloss@oracle.com

Attorneys for Plaintiffs
Oracle USA, Inc., et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

Case No. 07-CV-1658 PJH (EDL)

**STIPULATION, AND [PROPOSED]
FORM OF JUDGMENT AND
ORDER, IN LIEU OF CASE
MANAGEMENT CONFERENCE
STATEMENT**

STIPULATION, PROPOSED FORM OF JUDGMENT AND ORDER

By and through their respective undersigned counsel, plaintiffs Oracle USA, Inc., Oracle International Corporation and Siebel Systems, Inc. ("Oracle") and defendants SAP AG, SAP America, Inc. and TomorrowNow, Inc. ("Defendants") (together, the "Parties") hereby submit this Stipulation, and Proposed Form of Judgment And Order (this "Stipulation"). The Parties believe this Stipulation eliminates the need for a Case Management Conference Statement. The Parties stipulate:

1. Following the 2010 trial, this Court granted judgment as a matter of law in 2011. *See* Dkt. 1081 at 18-20; Dkt. 1088 (clarifying Dkt. 1081); Dkt. 1162 (denying motion to clarify and denying leave to move for reconsideration). This Court also granted Defendants' new trial motion. *See id.* This Court ordered a new trial on actual damages conditioned on Oracle rejecting a remittitur to \$272 million. Oracle rejected the remittitur (*see* ECF No. 1107) and this Court scheduled a new trial. *See* ECF Nos. 1108, 1190 and 1192.

2. To save the time and expense of a second trial, and to expedite the resolution of the eventual appeal, the Parties in 2012 stipulated to entry of judgment in the amount of \$306 million, with each side reserving appeal rights. Dkts. 1209, 1213.

3. Oracle thereafter appealed the Court's 2011 rulings to the Ninth Circuit Court of Appeals.

4. On August 29, 2014, the Ninth Circuit affirmed this Court's 2011 grant of judgment as a matter of law, as well as this Court's grant of a new trial conditioned on Oracle's rejection of a remittitur. Dkt. 1209. However, the Ninth Circuit also vacated this Court's ruling to the extent it set the 2011 remittitur at \$272 million and, instead, instructed this Court to offer Oracle the choice between a \$356.7 million remittitur and a new trial. *Id.*

5. Oracle intends to accept the revised remittitur. Therefore, the Parties stipulate to entry of judgment in the amount of \$356.7 million and \$2,468,758 of post-judgment interest, in the proposed form attached to this Stipulation as Exhibit A (the "Stipulated Judgment"), which will be the Court's final judgment in this matter.

6. Pursuant to the Stipulated Judgment, SAP agrees to pay Oracle \$359,168,758 USD by wire transfer no later than November 28, 2014, pursuant to wire transfer instructions already provided to SAP by Oracle, provided the Court enters Judgment in this action by November 24, 2014. If the Court does not enter Judgment by November 24, 2014, then SAP agrees to pay Oracle \$359,168,758 USD by wire transfer, pursuant to wire transfer instructions already provided to SAP by Oracle, no later than three (3) business days after the Court enters Judgment.

IT IS SO STIPULATED AND AGREED.

Dated: November 13, 2014

JONES DAY

By: /s/ Tharan Gregory Lanier
 Tharan Gregory Lanier
 Attorneys for Defendants
 SAP AG, SAP AMERICA, INC., and
 TOMORROWNOW, INC.

In accordance with General Order No. 45, Rule X, the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

Dated: November 13, 2014

BINGHAM McCUTCHEN LLP

By: /s/ Geoffrey M. Howard
 Geoffrey M. Howard
 Attorneys for Plaintiffs
 Oracle USA, Inc., Oracle International
 Corporation, and Siebel Systems, Inc.

PROPOSED ORDER

Based on the parties' stipulation, and good cause being shown, IT IS SO ORDERED. The proposed form of judgment attached as Exhibit A will be entered as the Court's final judgment in this matter. All other existing dates and deadlines in this matter, including the November 20, 2014 Case Management Conference, are hereby vacated.

IT IS SO ORDERED

1 Dated: November 14, 2014

By: _____

Judge Phyllis J. Hamilton
United States District Court for the Northern District of California

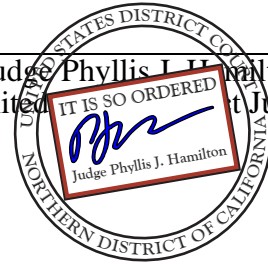


EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

Case No. 07-CV-1658 PJH (EDL)

AMENDED JUDGMENT

Pursuant to the Parties' Stipulation, Amended Trial Stipulation and Order No. 1 Regarding Liability, Dismissal of Claims, Preservation of Defenses, and Objections to Evidence at Trial (Dkt. No. 965), Additional Trial Stipulation and Order Regarding Claims for Damages and Attorneys Fees (Dkt. Nos. 961 and 969), Order Re Motions For Partial Summary Judgment (Dkt. No. 762), Order Granting Motion to Dismiss in Part and Denying It in Part (Dkt. No. 224), Order Granting Defendants' Motion for JMOL and Motion for New Trial; Order Denying Plaintiffs' Motion for New Trial; Order Partially Vacating Judgment (Dkt. No. 1081), and the Ninth Circuit's August 29, 2014 Opinion and September 22, 2014 Mandate (Dkt. Nos. 1243-44), IT IS HEREBY ADJUDGED AND ORDERED that:

- (1) JUDGMENT is entered against Defendant TomorrowNow, Inc. on Plaintiff Oracle International Corporation's claim for direct copyright infringement

1 and against Defendants SAP AG and SAP America, Inc. on Plaintiff Oracle
2 International Corporation's claim for indirect copyright infringement. On
3 these claims, Plaintiff Oracle International Corporation shall recover from
4 Defendants SAP AG, SAP America, Inc. and TomorrowNow, Inc.
5 ("Defendants"), jointly and severally, (a) in the amount of \$356.7 million
6 U.S. dollars (\$356,700,000 (US)), and (b) post-judgment interest of
7 \$2,468,758 U.S. dollars, which are the entirety of the relief entered for these
8 claims (not including the stipulation negotiated between the Parties
9 regarding destruction of infringing materials).

10 (2) JUDGMENT is entered against Defendants on Plaintiffs Oracle USA, Inc.,
11 Oracle International Corporation, and Siebel Systems, Inc.'s ("Oracle," and
12 together with Defendants, "the Parties") claims for past and future
13 reasonable attorneys' fees and costs (including investigative costs)
14 associated with Oracle's investigation and prosecution of its claims in this
15 case, for which the Parties agreed that Oracle should recover, and has
16 already been paid by Defendants, the amount of \$120 million
17 (\$120,000,000).

18 (3) JUDGMENT is entered for Plaintiffs Oracle USA, Inc., Oracle International
19 Corporation, and/or Siebel Systems, Inc., and against Defendant
20 TomorrowNow, Inc. on all liability for all claims, including for violations of
21 18 U.S.C. §§ 1030(a)(2)(C), (a)(4), (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) (the
22 Federal Computer Fraud and Abuse Act) and California Penal Code §§
23 502(c)(2), (c)(3), (c)(6) and (c)(7) (California's Computer Data Access and
24 Fraud Act), breach of contract, intentional interference with prospective
25 economic advantage, negligent interference with prospective economic
26 advantage, unfair competition, trespass to chattels, unjust
27 enrichment/restitution, and for an accounting, without separate monetary
28

1 damages or monetary relief, including punitive damages, or additional
2 injunctive relief by way of these claims. The recovery on these claims is
3 included in paragraph (2) above and no other damages or injunctive or other
4 relief is awarded by way of these claims.

- 5 (4) JUDGMENT of dismissal with prejudice is entered as previously stipulated
6 by the Parties, on all claims of Plaintiffs Oracle USA, Inc., Oracle
7 International Corporation, and/or Siebel Systems, Inc. against SAP AG and
8 SAP America, Inc., for alleged violations of 18 U.S.C. §§ 1030(a)(2)(C),
9 (a)(4), (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) (the Federal Computer Fraud and
10 Abuse Act) and California Penal Code §§ 502(c)(2), (c)(3), (c)(6) and (c)(7)
11 (California's Computer Data Access and Fraud Act), breach of contract,
12 intentional interference with prospective economic advantage, negligent
13 interference with prospective economic advantage, unfair competition,
14 trespass to chattels, unjust enrichment/restitution, and for an accounting.
15 (5) JUDGMENT of dismissal is entered, as previously ordered by the Court, on
16 all claims brought by Oracle Systems Corporation, J.D. Edwards Europe
17 and Oracle EMEA Limited.
18 (6) Except as specified in paragraph (2) above, no costs are awarded.
19
20
21
22

23 Dated: _____, 2014

24 By: _____
25 Judge Phyllis J. Hamilton
26 United States District Judge
27
28